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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO.       | CONFIRMATION NO.       |
|---|-------------|----------------------|---------------------------|------------------------|
| 10/538,999  | 06/15/2005  | Johannes Maria Evers | C7702(v)                  | 4260                   |
| 201 7590 01/08/2008<br>UNILEVER INTELLECTUAL PROPERTY GROUP<br>700 SYLVAN AVENUE,<br>BLDG C2 SOUTH<br>ENGLEWOOD CLIFFS, NJ 07632-3100 |             |                      |                           |                        |
|   |             |                      | EXAMINER<br>NGUYEN, TRI V |                        |
|   |             |                      | ART UNIT<br>1796          | PAPER NUMBER           |
|   |             |                      | MAIL DATE<br>01/08/2008   | DELIVERY MODE<br>PAPER |

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

## Office Action Summary

Application No.

10/538,999

Applicant(s)

EVERS ET AL.

Examiner

Tri V. Nguyen

Art Unit

1796

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 15 June 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-10 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some \* c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

***Double Patenting***

1. Claims 1-4, 7 and 8 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 3, 4 and 7 of U.S. Patent No. 6,846,790. Although the conflicting claims are not identical, they are not patentably distinct from each other because it would have nonetheless been obvious to the skilled artisan to achieve the dry cleaning process, as the reference teaches each of the claimed ingredients within the claimed proportions for the same utility and such modifications are recognized as being well within the purview of the skilled artisan to yield predictable results (e.g. the selection of a particular ingredient or step).

2. Claims 1-4 and 7 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1, 6, 7, 12 and 17 of U.S. Patent No. 6,900,166. Although the conflicting claims are not identical, they are not patentably distinct from each other because it would have nonetheless been obvious to the skilled artisan to achieve the dry cleaning process, as the reference teaches each of the claimed ingredients within the claimed proportions for the same utility and such modifications are recognized as being well within the purview of the skilled artisan to yield predictable results (e.g. the selection of a particular ingredient or step).

3. Claims 1-5 and 8-9 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-3 and 6-8 of U.S. Patent No. 7,244,276. Although the conflicting claims are not identical, they are not patentably distinct from each other because it would have nonetheless been obvious to the skilled artisan to achieve the dry cleaning process, as the reference teaches each of the claimed ingredients within the claimed

proportions for the same utility and such modifications are recognized as being well within the purview of the skilled artisan to yield predictable results (e.g. the selection of a particular ingredient or step).

4. Claims 1-10 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-4 and 6-9 of copending Application No. 10/539,001. Although the conflicting claims are not identical, they are not patentably distinct from each other because it would have nonetheless been obvious to the skilled artisan to achieve the dry cleaning process, as the reference teaches each of the claimed ingredients within the claimed proportions for the same utility and such modifications are recognized as being well within the purview of the skilled artisan to yield predictable results (e.g. the selection of a particular ingredient or step).

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

5. Claims 1 and 3-10 are provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-8 of copending Application No. 10/540,711. Although the conflicting claims are not identical, they are not patentably distinct from each other because it would have nonetheless been obvious to the skilled artisan to achieve the dry cleaning process, as the reference teaches each of the claimed ingredients within the claimed proportions for the same utility and such modifications are recognized as being well within the purview of the skilled artisan to yield predictable results (e.g. the selection of a particular ingredient or step).

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

***Claim Rejections - 35 USC § 102***

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

7. Claims 1-10 are rejected under 35 U.S.C. 102(e) as being anticipated by Evers et al. (US 2003/0097718).

Evers et al. disclose the dry cleaning process with a low aqueous step and a non-aqueous step (parag. 16-32) to clean various stains (parag. 139) and comprising the same ingredients -surfactant, solvent and water- within the same proportions (parag. 16 and claims 1-4 and 7).

Accordingly, the teachings of Evers et al. anticipate the material limitations of the present claims.

The applied reference has a common assignee and inventorship with the instant application. Based upon the earlier effective U.S. filing date of the reference, it constitutes prior art under 35 U.S.C. 102(e). This rejection under 35 U.S.C. 102(e) might be overcome either by

a showing under 37 CFR 1.132 that any invention disclosed but not claimed in the reference was derived from the inventor of this application and is thus not the invention "by another," or by an appropriate showing under 37 CFR 1.131.

***Claim Rejections - 35 USC § 103***

8. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

9. Claims 1-3 and 6-10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Perry et al. (US 2002/0115582) in view of Goedhart et al. (2002/0142932).

Perry et al. disclose a dry cleaning method that uses the same formulation as the applicant (parag. 10) with an acidic surfactant (parag. 36, 46 and 54) to treat fabrics for stain removal (parag. 9, 65-66 and 95).

Perry et al. fail to specifically disclose a dry cleaning composition comprising the dry cleaning solvent, water and surfactant in the amounts as those recited by the Applicant.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to select the portion of the prior art's range which is within the range of applicant's claims because it has been held to be obvious to select a value in a known range by optimization for the best results. As to optimization results, a patent will not be granted based upon the optimization of result effective variables when the optimization is obtained through routine experimentation unless there is a showing of unexpected results which properly rebuts the

*prima facie* case of obviousness. See *In re Boesch*, 617 F.2d 272, 276, 205 USPQ 215, 219 (CCPA 1980). See also *In re Woodruff*, 919 F.2d 1575, 1578, 16 USPQ2d 1934, 1936-37 (Fed. Cir. 1990), and *In re Aller*, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955). In addition, a *prima facie* case of obviousness exists because the claimed ranges “overlap or lie inside ranges disclosed by the prior art”, see *In re Wertheim*, 541 F.2d 257, 191 USPQ 90 (CCPA 1976; *In re Woodruff*, 919 F.2d 1575, 16USPQ2d 1934 (Fed. Cir. 1990). See MPEP 2131.03 and MPEP 2144.05I.

Perry et al. do not explicitly disclose the various liquid to cloth ratios. In the analogous art of dry cleaning, Goedhart et al. disclose the feature of cloth ratio of 13 (parag. 50). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the method as taught by Perry et al., with the feature of contacting the colored fabric in a dry cleaning in a dry cleaning solution. One would have been motivated to modify the method to ensure that the dry clean solution is sufficiently contacting the fabric for cleaning purposes while optimizing the solution volume to minimize the needed dry cleaning solution.

Furthermore, a *prima facie* case of obviousness exists where the claimed ranges and prior art ranges do not overlap but are close enough that one skilled in the art would have expected them to have the same properties, see *Titanium Metals Corp. of America v. Banner*, 778 F.2d 775, 227 USPQ 773 (Fed. Cir. 1985). See MPEP 2144.05I. The Goedhart’s disclosure of an LCR of 13 in example on page 3, parag. 50 is seen as close enough absent of unexpected results. The claim would have been obvious because a particular known technique was recognized as part of the ordinary capabilities of a skilled artisan.

10. Claims 4 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Perry et al. in view of Goedhart et al. as applied to claim 1 above and further in view of Giampalmi et al. (US 3,689,211).

Perry et al. and Goedhart et al. disclose the dry cleaning method of claim 1 above but do not explicitly disclose a secondary dry cleaning step. In the analogous art of dry cleaning, Giampalmi et al. disclose the feature of non-aqueous step followed by a low aqueous step (col 1, line 66 to col 2, line 37). Therefore, it would have been obvious to one having ordinary skill in the art at the time the invention was made to modify the method as taught by Perry et al., with the feature of further contacting the fabric with a secondary solution. One would have been motivated to modify the method to ensure that different types of stains are treated and minimize adverse effect based the nature of the fabric and the type of stains. The claim would have been obvious because a particular known technique was recognized as part of the ordinary capabilities of a skilled artisan.

Perry et al., Goedhart et al. and Giampalmi et al. fail to specifically disclose a dry cleaning composition comprising the dry cleaning solvent, water and surfactant in the amounts as those recited by the Applicant.

It would have been obvious to one of ordinary skill in the art at the time the invention was made to select the portion of the prior art's range which is within the range of applicant's claims because it has been held to be obvious to select a value in a known range by optimization for the best results. As to optimization results, a patent will not be granted based upon the optimization of result effective variables when the optimization is obtained through routine experimentation unless there is a showing of unexpected results which properly rebuts the *prima facie* case of obviousness. See *In re Boesch*, 617 F.2d 272, 276, 205 USPQ 215, 219 (CCPA 1980). See also *In re Woodruff*, 919 F.2d 1575, 1578, 16 USPQ2d 1934, 1936-37 (Fed.



Cir. 1990), and *In re Aller*, 220 F.2d 454, 456, 105 USPQ 233, 235 (CCPA 1955). In addition, a *prima facie* case of obviousness exists because the claimed ranges "overlap or lie inside ranges disclosed by the prior art", see *In re Wertheim*, 541 F.2d 257, 191 USPQ 90 (CCPA 1976; *In re Woodruff*, 919 F.2d 1575, 16USPQ2d 1934 (Fed. Cir. 1990). See MPEP 2131.03 and MPEP 2144.05I.

### **Conclusion**

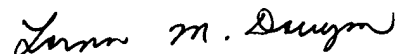
11. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Tri V. Nguyen whose telephone number is (571) 272-6965. The examiner can normally be reached on M-F 8:00 AM to 5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisors, Vasu Jagannathan can be reached on (571) 272-1119. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

NVT

NVT  
January 4, 2008

  
LORNA M. DOUYON  
PRIMARY EXAMINER